"there is no administrative necessity for the introduction of this measure."

Mr. W. B. Jones, Sir S. Morris' successor, says : "I am far from being inclined to make too much of this argument" (the administrative convenience argument.)

Sir James Gordon, the Chief Commissioner of Curg, states through Mr. Lyall, the Officiating Chief Commissioner, that his opinion is strongly in favour of the withdrawal of the Bill, therefore it is clear that in his opinien there is no administrative necessity for it.

Mr. Lyall, the Officiating Chief Commissioner of Curg, says : "I am in fact in favour of the entire withdrawal of the Bill." It is manifest, therefore, that, in his opinion, there is no administrative necessity for the Bill.

The Resident of Hyderabad says : "No practical inconvenience of any magnitude arises from its maintenance" The antecedent of "its" is the British privilege to be tried by an Englishman.

The Commissioner of the Hyderabad Assigned Districts says : "I cannot find that the actual present existence of such a difficulty" (namely, administrative inconvenience, referred to in the preceding paragraph) "has been complained of, or represented by any of the Local Governments, neither have any instances been adduced, as far as I can gather, many of the speeches in support of this Bill, establishing that such a difficulty has been felt."

The Commissioner of Sind says —"I have never been in a District in which there were not several European Magistrates, and so far as I am aware, there are none such. For this reason, I do not consider that, so far as magisterial cases are concerned, any practical inconvenience is likely to be experienced by the law being maintained in its present form. Some slight inconvenience might be caused were the District Sessions Judge a native gentleman who could not try a European prisoner, but this slight degree of inconvenience would not, in my opinion, justify the change proposed."

The Chief Commissioner of British Burmah says :—"He does not think that any practical reason has been shown for changing the present law. No immediate administrative necessity exists."

The Chief Commissioner of Assam says :—"No such case" (as the context describes, that is, no such very strong case as would justify the Ilbert Bill) "can, in his opinion, be made out for the Bill under discussion. The argument from administrative convenience is allowed to be a weak one it does not exist in Assam at all." This is one of the two Provinces which contain a large number of British Tea Planters, and

will therefore be more affected by the Bill, if it becomes law, than any other Province except Bengal.

The Lieutenant-Governor of Bengal says :—"The argument based on 'administrative inconvenience' is utterly untenable in the present constitution of the Civil Service : and, if it is untenable in Bengal, where six out of the nine native Covenanted Civilians are employed, it can scarcely affect any other administration in the country."

The Chief Justice of Bengal and his ten European colleagues say :—"So far as their own observations go, the Judges are unaware of the existence of any of the reasons by which a legislative change is usually demanded. In the exercise of their duties of superintendence and revision they have occasion to watch attentively the working of the Criminal Courts, the returns of which are continually before them. Nothing in those returns indicates that there is at present any administrative inconvenience, any miscarriage of justice, any hardship inflicted on prosecutors, witnesses, or accused, or any dissatisfaction felt with the provisions of the courts."

From the above extracts it is abundantly clear that all the responsible Governments, as well as all the High Courts, whose position gives them special means of arriving at a correct conclusion, are of opinion that no administrative necessity has arisen. We are therefore entitled to ask Dr. Hunter to redeem his pledge, publicly given in the Supreme Legislative Council of India on the 9th March last, by declining as publicly to support the Ilbert Bill. Of course Dr. Hunter will not allow his letter to the *Times* to stand in the way of his redeeming his pledge, because that very letter proves that, in his opinion, the duty of redeeming a pledge is paramount to all other duties. All he need do is to write to the Editor of the *Times* to the effect that his former letter was written under a mistaken idea of the facts (as my letter of the 3rd instant proves to be the case), and that he, therefore, begs to withdraw it. Of course evil-disposed persons may say that, he has eaten his words. But what of that? He must eat his words, whether he withdraws his ill-considered letter to the *Times*, or breaks his pledge. An honourable man would adopt the former, a dishonourable one the latter course. Therefore, there is but one course open to Dr. Hunter, an honourable member of the Supreme Legislative Council of India and that is, to withdraw his letter to the *Times*, and redeem his pledge by publicly declining to support the Ilbert Bill.

BRITANNICUS.

November 5, 1883.

THE OPINION OF THE CHIEF COMMISSIONER OF BRITISH BURMAH.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Mr. Crosthwaite, the Chief Commissioner of British Burmah, is a wise man. He has no objection to other people's tails being cut off, he objects to the painful operation being performed upon his own. He advocates the passing of the Bill for all the Provinces of British India, but advices its being "dropped" as regards his own Province, British Burmah! The only reason he gives for putting an end to it by means of the drop as regards British Burmah is that "there is no necessity for any change in the law" there. That is no doubt an all-sufficient objection, but an overwhelming majority of the Local Government and other high officials think that objection equally applicable to British India.

He says the case of British India is different. But how it is different he does not explain. Does he mean that the Burmese are so much worse than Bengalees, that it would be unsafe to trust native Burmese Magistrates with criminal jurisdiction over European British subjects? If that is his meaning, every Burmese official ought to be dismissed from the service. Until Mr. Crosthwaite explains what he does mean we decline to accept his *ipse dixit* that the case of British India differs from that of British Burmah. That there is no necessity for any change in the law in British Burmah we admit, but we say that neither is there any necessity for a change in the law in British India. In so saying we are supported by an immense majority of the officials whose opinions have been called for by the Government of India.

Granting, for the sake of argument, that which we most strenuously deny, that Dr. Hunter is justified in saying that the opinions of the District Officers are unduly baissed, and restricting ourselves therefore, to the opinions of Local Rulers, High and Chief Court Judges, Commissioners of Divisions, and Legal Remembrancers, we have 84 opinions, of which 11 are silent, and 73 against there being any necessity for a change in the law. But, treating the 11 opinions silent upon the question as if they advocated it, we have the enormous majority of 73 votes out of the 84 against there being any necessity for a change in the law. These votes consist of 13 Local Rulers, 23 High Court and Chief Court Judges, including the Recorder of Rangoon, and 37 Commissioners of Divisions, against 1 Local Ruler—excluding the Chief Commissioner of British Burmah, on account of his having voted both ways, that is to say, adversely as regards his Province and favourably as regards British India—8 High Court Judges, 3 of whom are natives, and 1 of whom, Sir Charles Sargent, the Chief Justice of Bombay, was on leave in

England, and therefore temporarily *functus officio* when he wrote his opinion, and 2 Commissioners of Divisions.

If, however, any supporter of the Bill thinks I am wrong in including the Governors of Madras and Bombay, and Mr. Jones, the present Chief Commissioner of the Central Provinces, among the number of those who show that there is no necessity for a change in the law, I will, without admitting that I am wrong, make him a present of their votes. The numbers will then stand thus, 10 Local Rulers to 4, and 23 High Court and Chief Court Judges to 8, and 35 Commissioners of Division to 2, and 2 Superintendents and Remembrancers of Legal Affairs to none; or adding their votes together 70 votes to 14, or five-sixths of the whole number of votes against there being any necessity for a change in the law. If the opinions of the high officials were intended to have any weight in the matter, the fact of five-sixths of the whole 84 high officials, enumerated by me, being of opinion that there is no necessity for any change in the law, ought to convince Lord Ripon of the necessity for withdrawing the Ilbert Bill. If there never was any intention to abide by the opinions of the high officials, it was an insult to them, and a wanton waste of the public time, to ask them to write their opinions upon the subject. Mr. Crosthwaite regrets the introduction of the Bill, and thinks it should be dropped as regards British Burmah, and yet he supports its being passed for British India! He sees "no reason for believing that a properly qualified native gentleman, sitting as a Magistrate, will be more likely to be deceived by false complaints, or more disposed to give a case against a European than an English Magistrate," and yet he says "the Executive Government will doubtless recognise the inexpediency of appointing a native Magistrate to be Justice of the Peace in a district much frequented by European settlers!" He is of opinion that few of the objections raised to the Bill have any substantial ground, but he does not attempt to refute even one of them.

Mr. Crosthwaite appears to be so satisfied with himself that he is unable to see the inconsistencies of his own utterances, of which those given above are specimens. In fact, whilst composing his profusion he appears to have thought he was called upon to lay down the law *ex cathedrâ*, and not to give reasons for his opinions.

His opinion is dated the 16th July 1883, and yet, at that date, "he believes and trusts that once the Bill is passed the agitation will subside." This proves him to be devoid of one of the qualities most essential to the ruler of a Province, the power of deciphering the signs of the times.

BRITANNICUS.

November 9, 1883.

MR. JUSTICE MITTER'S OPINION.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Mr. Justice Mitter, with the erudition which an entelligent articled clerk of three years' standing could have displayed, if he had had access to such a law library as Mr. Justice Mitter had access to, gives us a dry historical statement of Acts of Parliament and Acts of the Legislative Council of India until he comes to Section 105 of 53 Geo. III, Cap. 155, which he says empowers of Magistrate of a District to take cognisance of certain petty offences committed by European British subjects against any native of India. He then points out that by 1 Section " of Act IV of 1843 provisions were made for appeals against the convictions of European British subjects by native Magistrates and Justices of the Peace," and then he tumbles into a beautiful mare's nest, and kicks up his heels and wallows therein to his heart's content. The mare's nest is contained in the following words :—" This shows that a Magistrate of a District, although not a Justice of the Peace, was competent to take cognizance of complaints relating to offences mentioned in Section 105 of 33 Geo. III., Cap. 155, committed by a European British subject." If the native Judge had read the said Section 105 carefully to the end, he would have discovered that it must be read in conjunction with 33 Geo. III., Cap. 52, Sec. 151, and that therefore the word " Magistrate" used in Section 105 of the first-mentioned statute must be held to mean a Magistrate who is a Justice of the Peace. The following passage in Sec. 105 above referred to proves this :— " Provided that all such convictions shall and may be removable by writ of certiorari into the said Courts of Oyer and Terminer and Gaol Delivery respectively, in the same manner, and upon the same terms and conditions, and shall be proceeded upon in the same manner in every respect, as is directed in the said Act of the thirty-third year of His Majesty's reign (33 Geo. III, Cap. 52) with regard to other convictions before Justices of the Peace in the British settlement or territories in India." The phrase " other convictions of Justices of the Peace" implies that the convictions under the statute must be by Justices of the Peace, and therefore the words " Magistrate of the Zillah or District" must be interpreted to mean " Magistrate of the Zillah or District who is a Justice of the Peace." Now since Act IV of 1843 recites the statute 53, Geo. III, Cap. 155, it is clear that that statute was in force at the time when the Act was passed. Therefore anything in the Act repugnant to the statute is without force and void, and consequently in so far as the Act enacts anything in connection with the statute regarding a Magistrate who is not a Magistrate of a

Zillah or District, or about a Magistrate of a Zillah or District who is not a Justice of the Peace, it has no effect.

The next Act which the native Judge cites is Act VII of 1853 of the Government of India. By Section 2 of that Act it is enacted that the powers given by Section 135 of 53 Geo. III, Cap. 155 "to the Magistrate of the Zillah or District, may be lawfully exercised by any Joint Magistrate or other person lawfully exercising the power of a Magistrate, in the case of any such offence as aforesaid." But since, as I have already shown, a Magistrate of the Zillah or District could not exercise the powers given by the statute unless he was a Justice of the Peace, *à fortiori* the Joint Magistrate or other person exercising the powers of a Magistrate mentioned in Act VII of 1853 could not exercise them, unless he was a Justice of the Peace. That this was so understood the practice proves, for, if the records be searched, I think it will be found that not only between 1853 and 1861, but between 1813, the year of the passing of the statute, and 1861, no Magistrate who was not a Justice of the Peace even took cognizance of any case under that statute. It is therefore clear that no native Deputy Magistrate ever took cognizance of any such offence, for the simple reason that he was never empowered to do so. Between 1853 and 1861 doubts arose in the minds of some persons who, like Mr. Justice Mitter, had not read Section 105 of the statute with a lawyer-like mind, therefore the Indian Legislature set the question at rest in Section 42 of Act XXV of 1861 by the words:—"Provided that the jurisdiction given by the said Statute (53 Geo. III., Cap. 155) and the said Act ("Act VI of 1853") shall be exercised only by Justices of the Peace."

In the 16th paragraph of his opinion, the native Judge says that by Section 3 of Act II of 1869 "the Governor-General of India in Council and the Local Governments were empowered to appoint Justices of the Peace from the Covenanted Civil Servants of the Crown in India, or other British inhabitants," and then he remarks that at that time, *viz.*, 1869, a native of this country was a member of the Covenanted Civil Service. Paragraph 20 of his opinion shows that by that remark he intended to insinuate that Section 3 of Act II of 1869 empowered the Governor-General of India in Council and the Local Governments to appoint a native Covenanted Civil Servant a Justice of the Peace. But I have already shown in my letter of the 14th October last, published by you on the 19th of the same month, that the word "other" restricts the appointment to Covenanted Civil Servants who are British inhabitants, and since native Covenanted Civil Servants are not British inhabitants, Act II of 1869 does not empower the

Governor-General of India in Council or the Local Governments to appoint them Justices of the Peace.

Mr. Justice Mitter therefore has erred in his interpretation of Act II of 1869, which is founded upon 33 Geo. III, Cap. 52. If then a native High Court Judge makes such gross blunders in the interpretation of a law the meaning of which an intelligent articled clerk of three years' standing would not mistake, what confidence can we have in the legal attainments of his subordinates, native District Magistrates and native Sessions Judges, or, in fact, in any other native Magistrate?

In reply to the first part of Section 20 of the native Judge's opinion, I have merely to point out that I have already proved that Act VII of 1853 did not empower native Deputy Magistrates to take cognizance of cases under Section 105 of 53 Geo. III, Cap. 115. In reply to the second part of the paragraph I have merely to say that if a native Covenanted Civil Servant had been appointed Emperor of the Moon between 1861 and 1872 by competent authority on earth he might have ruled over the moon, but since there was no competent authority on earth to appoint him to that office, any more than there was any competent authority in India to appoint him a Justice of the Peace, the pretended appointment would in both cases have been equally ineffective. Therefore the pretended appointment of a native Covenanted Civilian to the office of Justice of the Peace between 1861 and 1872 would have given him no jurisdicton over cases under the statute. Therefore Mr. Justice Mitter's argument that between 1861 and 1862 there was a break in the continuity of the right of British men and British women to be tried by their own countrymen, and that the privilege was first conferred upon them by Act X of 1872, utterly fails. If then the conjecture is right that the Government of India intends in the next debate upon the Bill, to lean upon Mr. Justice Mitter's opinion upon this point, they will lean upon a very rotten reed. But the case does not rest here. Mr. Justice Mitter's opinion is either his honest opinion or it is not. If it is his honest opinion, he has proved himself to be incapable of interpreting statute law correctly. If it is not his honest opinion, he has proved himself to be capable of misleading the Government, whose trusted servant he is, upon what Sir Charles Aitchison calls a "burning political question."

Mr. Justice Mitter then states what he calls facts, three of which, on being examined, turn out not to be facts at all. The pretended facts to which he alludes are:—

1.—That the jurisdiction has been exercised by native Judges in civil cases in which European subjects are concerned without any complaint from them. The fact is that complaints have been numerous,

and, if not loud, they have been very deep, and that in many cases their complaints have led to appeals in which the native Judges' decisions have been reversed.

2.—That the jurisdiction in criminal cases against European British subjects has been exercised by "Native Judges (Query "Magistrates") in Presidency towns without any defect in the administration of justice." The 4th paragraph of the opinion of Mr. T. T. Allen, the Superintendent and Remembrancer of Legal Affairs, proves the contrary to be the fact. If, too, the records were searched many defects in the administration of justice could be found. Want of space will not permit me to mention more than five cases :—

First, the dismissal of the first native Presidency Magistrate of Calcutta for misconduct ; second, the imposition by Mr. Gupta of a fine of Rs. 1,000 upon an Englishman for an offence which on appeal the Judges of the High Court of Calcutta said would have been adequately punished by fine of Rs. 50 ; third, the sentence of four months' imprisonment with hard labour passed by a Madras native Magistrate upon a poor Englishman who had overstayed his leave a couple of days from the work-house, notwithstanding the testimony of the master of the workhouse to his general good conduct ; fourth, the dismissal from the Bombay Magistracy of Mr. Nana Morojee for misconduct which had been strongly animadverted upon by the Bombay High Court ; and fifthly, the severe reprimand administered by the Government of Bombay to Mr. Dosabhoy Framjee for his conduct in the case of Mr. Edwards.

3.—"That the administration of justice by European Magistrates in criminal cases in which natives are concerned has been regarded by the people as wholly satisfactory." This is the only one of Mr. Justice Mitter's so-called facts which is true. This is proved by the numerous applications, referred to in the official opinions, made by natives for their cases to be transferred from the courts of native to those of British Magistrates.

4.—"That the administration of justice by a Judge of one nationality or *creed* in a case in which one or both litigants happen to be of another nationality or creed has not been found to be productive of the failure of justice." This statement, as worded by Mr. Justice Mitter, is a self-evident proposition. Of course the administration of justice has not been found to be productive of the failure of justice. But if he means that the decisions arrived at by Hindu Magistrates in cases in which one litigant is a Brahman or an influential Hindu, or a member of their own caste, and the other litigant is a Muhammadan, or a low caste, or no-caste Hindu, have not been productive of failure of

justice, there will be found an abundance of cases in which, certainly from the Muhammadan, the low caste, and the no-caste Hindu point of view, failure of justice has occurred.

In the 27th paragraph of his opinion, Mr. Justice Mitter admits the wide distinction between civil suits and criminal cases, so clearly pointed out by the Chief Justice of the Allahabad High Court, but he illogically argues that nevertheless a good civil Judge would necessarily make a good criminal Judge also.

He has been a civil Judge all his life. Before he became a High Court Judge he had no power to preside at a criminal trial. Since he became a High Court Judge he has never had the opportunity of presiding at one. His argument, then, is really a selfish one. The allegation that a good civil Judge must necessarily make a good criminal Judge is a theory which has been contradicted by fact. Good civil Judges, especially in India, have in many cases been found to be bad criminal Judges. But Mr. Justice Mitter proves himself to be ignorant of the most essential qualification of a good criminal Judge by omitting to mention it, namely, the power of diviping from the habits, customs, mode of thought and springs of action of the accused, whether the case made by the evidence against him bears the stamp of probability. This qualification is more necessary in India, where Dr. Hunter tells us the fabrication of false charges supported by false evidence has been reduced to an exact science, than in any other country. Now a native civil Judge, who originally possessed this faculty, loses it, as all other natural gifts are lost, by long disuse. Moreover though before he lost that faculty he might, if he possess the faculty of being honest and impartial, make a good criminal Judge or Magistrate in cases in which natives are the accused, on account of his intimate acquaintance with the habits, custom, and manners of his fellow-natives, his ignorance of our habits, customs, and manners would, however good a civil Judge he might be, preclude him from being a good criminal Judge or Magistrate in cases in which Englishmen and Englishwomen are the accused. But the qualifications of native civil Judges have nothing to do with the question, for it is not the so-called good civil Judges to whom the Government of India purpose to give criminal jurisdiction over European British subjects, but to native Magistrates rejected by the votes of the native population themselves in their numerous applications to have their cases transferred from them to the Courts presided over by British Magistrates.

In the 29th paragraph of his opinion the native Judge puts the following supposititious case—"In civil cases if native Judges have proved themselves to be fair, honest, efficient and careful officers, is it

not unjust to presume that, in criminal cases, they would prove themselves to be just the same?" But the proposal is not to invest native civil Judges with criminal jurisdiction over European British subjects, therefore the insinuation, which begs the question, that they are fair, honest and efficient, and careful, even if true, is utterly irrelevant to be the question at issue, which has reference to native Magistrates, and not to native civil Judges. The question really at issue is the question which all the supporters of the Bill persistently avoid, because they know they are already beaten upon it. It is this. Will the Government effect that which they declare, to be their only object, the impartial and effectual administration of justice, by passing the Ilbert Bill, the effect of which is to diminish the number of British Justices of the Peace, who, as Mr. Justice Mitter admits, have given entire satisfaction to the native population, and as we admit, have given entire satisfaction to the British population by their decisions in criminal cases, and to supply the deficiency thus created by the appointments in their stead of native Justices of the Peace, who it is proved by numerous applications on the part of natives to have their cases transferred from the courts of native Magistrates to those of British Magistrates, have not given satisfaction to the native population, and who for that and other good and sufficient reasons already given, we say will not give satisfaction to the British population?

The best answer to the concluding sentence of the native Justice's opinion is contained in the 3rd paragraph of the Minute of the Chief Justice of the Allahabad High Court, upon the incapacity of natives for the investigation of facts.

In reply to the arguments of the opponents of the Bill to the effect that native Magistrates would not be able to form a correct opinion as to the real motives of action of an accused British man or British woman on account of his ignorance of the habits, manners, customs, mode of thought, and springs of action of the accused, the native Judge asserts that, what he calls, all the four facts set forth above afford a complete answer. But I have shown that three of those alleged facts are not facts at all, and that the fourth fact, namely, that the decisions of British Magistrates in criminal cases are so vastly superior to those of native Magistrates that continual applications are made by the native population all over India to have their cases transferred from the Courts of native Magistrates to those of British Magistrates, entirely refutes Mr. Justice Mitter's argument.

In the 33rd paragraph of his opinion, Mr. Justice Mitter alleges that that may be asserted without fear of contradiction which has been repeatedly contradicted in the official opinions, which the opponents of

the Bill have all along denied, and which I therefore on behalf of myself and others, most emphatically contradict, namely, that the knowledge of European Judges of the habits, customs and manners of the natives of this country is not in any degree superior to that of native Judges, with fair English education, regarding European habits, customs and manners. Admitting, for the sake of argument only, this to be true, the answer to this, as Mr. A.C. Jervoice, the District Magistrate of Belgaum, correctly states, is "that it is not ever found that a native prefers having his case tried by a native instead of a European, and that, therefore, however reasonable the sequel may appear, it is fallacious." But, as Mr. W. B. Jones, the Chief Commissioner of the Central Provinces, clearly points out, Mr Justice Mitter's statement is incorrect.

The English Magistrate, says Mr. Jones, "is a man who has come to spend his whole working life in India; the native Magistrate is at best one who has spent two or three years at College in England." Mr. Jones also remarks that the mere fact that the English Magistrate lives from 25 to 35 years among natives, and makes India his home for the best part of his life, gives him an advantage over even the native Civilian who has obtained his place by competition in England. It is clear then that during the 25 to 35 years, that the English Magistrate resides among natives in India, he must acquire a knowledge of their habits, customs and manners far superior to that which it is possible for a native to acquire of English habits, manners and customs during a two ot three years' cramming in England for the Civil Service Examination, which leaves him no time to study English habits, customs and manners.

The argument contained in the 34th paragraph of Mr. Justice Mitter's opinion is really too absurd. It amounts to this, that because English Magistrates, whose constitutional training, the inheritance of centuries of freedom, and whose natural qualities and knowledge of native habits, customs and manners make them peculiarly fitted for the work, have been found to be successful in the administration of criminal cases in which natives have been the accused, therefore, native Magistrates, whose constitutional training, the inheritance of centuries of slavery, and whose natural qualities and ignorance of British habits, customs and manners render him peculiarly unfitted for the work, would be found successful in the administration of criminal justice in cases in which British men and British women may be the accused. The learned Judge would, I suppose, back Mr. Robinson's hack against Mr. Thompson's racer, because the former is inferior to the latter in pedigree, speed and training.

In the 35th paragraph of his opinion the native Judge argues that, if native Magistrates have given satisfaction in cases in which Englishmen have been complainants and natives defendants, therefore they would give satisfaction in cases in which natives are complainants and Englishmen are the accused. This is another suppositious case, in which the conclusion drawn by Mr. Justice Mitter is a *non sequitur*.

In his last argument the native Judge assumes that no complaint has been made of any failure of justice in the hands of native Magistrates in criminal cases in which Europeans and Eurasians who are not European British subjects have been tried for offences, therefore native Magistrates are fit to try British men and women. In assuming that no complaint has been made, Mr. Justice Mitter begs the whole question, for complaints have been made in many cases in the shape of appeals, in which the native Magistrate's decisions have been reversed. His conclusion is another *non sequitur*.

If then it be true that an ounce of fact is worth a ton of theory, it surely must be true that the ton of fact, which I have given Mr. Justice Mitter, is worth much more than his little ounce of theory.

BRITANNICUS.

November 25, 1883.

MR. H. J. REYNOLDS ON THE ILBERT BILL.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—I have read with considerable surprise the letter in favour of the principle of the Ilbert Bill, signed "H. J. Reynolds" which appeared in your issue of the 23rd ultimo. I presume that the writer is the Hon'ble Mr. Reynolds of the Civil Service, a member of the Supreme Legislative Council of India, who spoke in the debate on the Bill in Council on the 9th March last. Before crossing swords with him, allow me to return his courteous salute, and to thank him for his kind mention of myself.

I did not do myself the honour of noticing his speech in the Council on the 9th March last, because, although I deplored his acceptance of the principle of the Bill, I thought that the conclusion of his speech showed that in the end he would vote against it. His letter under review has dispelled that illusion. It remains, then, to be seen whether that illusion was one of my creation, or of his. Now, I had a right to assume, as I did, that the member who uttered the words above alluded to, and presently quoted, was an honourable man, and that in the event of the fulfilment of the conditions stated by himself, which I knew would be fulfilled, he would not incur the serious responsibility of

voting for the Bill, the very bad thing about which, as His Honour the Lieutenant-Governor of Bengal truly says, is its principle. Therefore I say that the illusion, if in the end it turns out so to be, that Mr. Reynolds would not vote for the Bill, was one of his, and not of my creation.

The concluding sentences of his speech above referred to are these:—"It is of course a further question whether, in view of the determined opposition which this measure has encountered, it would be prudent in the Government to make any further attempt to pass it into law. It appears to me that this is primarily a question for the Executive, but I imagine it is quite within the competence of this Council as a Legislative body to say that, though the abstract principles of a measure may be equitable and right, it would be impolitic and inopportune to make them part of the law of the land. * * * * If the present ferment should subside, if the passions which have been aroused, and the misrepresentations which have been made, should disappear before a calm consideration of what Government really propose to do, and what the effects of its legislation are likely to be, I should gladly give my vote, when the time comes, for passing into law a measure based upon the principle of this Bill. But if, on the other hand, postponement and reflection should intensify the feeling which undoubtedly exists to-day, if it should be made clear that the deliberate verdict of the European community in India is opposed to any such legislation as this, if the appeal to Philip sober, which is now to be made, should be dismissed on the merits of the case, the Government would undoubtedly incur a serious responsibility by asking this Council to pass the Bill."

The appeal has been made, I will not say from Phillip drunk, as Mr. Reynolds insinuates, for the Philip meant has never been drunk but from Philip sober, to Philip sober and his disapproval of the Bill is as strong as ever. Postponement and reflection have intensified the feeling of the opposition to the principle of the Bill which existed on the 9th March last. It has been made abundantly clear that the deliberate verdict, not only of the European community in India, but also of those retired officials and non-officials in England who formerly formed a distinguished portion of the European community in India is vehemently opposed to any such legislation as is proposed in the Bill. Therefore, according to Mr. H. J. Reynolds, the Government will undoubtedly incur a serious responsibility by asking the Legislative Council to pass the Ilbert Bill or any modification of it. Is Mr. Reynolds prepared to incur, that serious responsibility. He must reflect before he answers the question, that it is not a responsibility which is capable of division, but one, the whole of which each member of the Legislative Council who votes for the passing of the Bill, or any modification of it, must bear.

Mr. Reynolds says he approves of the principle of the Bill. I do not doubt but that so courteous an antagonist is honest in his approval. But let me ask him to reflect that a very large majority of the honourable service to which he belongs disapproves of it, and that their disapproval must necessarily be as honest as his approval. That fact alone ought to suggest to his mind at least the possibility of a doubt as to the correctness of his own opinion. If he admits so much, it will be possible to argue with him. If he does not admit so much, we must with deep regret at the sad fate of one whom we believe to be an honourable man, leave him to sink in the slough of despond which will inevitably engulf all those who incur the serious responsibility of voting for the Bill, or for any modification of it.

I have not hitherto spoken of myself, nor do I intend to say much now. I merely wish to say that to have advocated the Bill might have been more advantageous to me and mine, but my conscience would not permit me to advocate a measure the principle of which I clearly saw was essentially vicious. Therefore, casting aside all hope and expectation of reward, I have, with the kind permission of the Editor of the *Englishman*, for which I tender him my sincere and heart-felt thanks, published to the world my strong convictions, grounded not upon theory but upon evidence, against the Bill. For the above reasons I claim from Mr. Reynolds what I accord to him, the right to be considered honest and sincere in my arguments. If he admits my right, then I ask him not to turn away from arguments with so careless a reply as, "I am not careful to answer in this matter," or, "I do not propose to discuss this question;" for the questions which I have discussed are those which have been mooted by the Government of India and the supporters of the Bill. Mr. Reynolds has failed to see that, when he stood forth as a champion of the Government who had mooted the questions argued by me, and replied as above quoted, he virtually admitted, on behalf of the Government whose champion he was, that my arguments were unanswerable. It would be different, of course, if I had mooted the questions, for no man is compelled to argue a question against his will. But the questions which I have argued have been those only which the Government and the supporters of the Bill have mooted, and, in some cases, by assuming them to be true they have begged the whole question upon which the argument turned. If it had been possible for me to have been so dishonest as to argue against my convictions, I should have been deterred from doing so by the strong sense of justice inherited from my Men of Kent ancestors, and by my great compassion for my poor countrymen and countrywomen, the railway employés, artisans and others, their wives and daughters,

who, I believe, and the opinion of the British Judges of the Calcutta High Court confirms me in that belief, will have to bear the brunt of the oppression of the Ilbert Bill, and who, the Chief Commisioner of the Central Provinces truly says, will be very helpless against it. Let me then exhort Mr. Reynolds to consider these facts, in order that it may not be said of him hereafter as it was of Gallio, that he "cared for none of these things." Let him reflect too that, though the high-placed and high-salaried Civilian and the wealthy Planter, their wives and daughters, will not at first be reached by the oppression of the Bill, of which their poorer countrymen and countrywomen will have to bear the brunt, the time will surely come when they, too, among whom there may be some who are dear to him, will rue the day on which they allowed the Ilbert Bill to become law.

Mr. Reynolds says he approves of the principle of the Bill. But why does he refrain from telling us what the principle is of which he approves? It is a curious fact that all the supporters of the Bill are loud in their approval of its principle, but silent as to what the principle is of which they approve. Is their silence caused by their being ashamed of the principle of which they approve? It would seem so, for, if the principle were a noble one, Lord Northbrook would have seized upon the late opportunity to declare it throughout the length and breadth of England. It cannot be the securing of the impartial and effectual administration of justice which the Government of India said was their only object in introducing the Bill. That would be a noble principle, a principle to be boasted of, and worthy of being proclaimed throughout the length and breadth of England, a principle of which every supporter of the Bill would be proud to declare that he approved. No, that noble principle has been abandoned for one of which the supporters of the Bill are ashamed, namely, the securing of a less impartial and effectual administration of justice than at present exists. No wonder the supporters of the Bill are ashamed of it! No wonder, Lord Northbrook was silent about it! Or is the principle of the Bill what the "Statement of Objects and Reasons" declares it to be, that the time has arrived for modifying the existing law, and removing the present bar upon the investment of native Magistrates in the interior with powers over European British subjects?" Is that the principle of which Mr. Reynolds approves? If it is, what can it matter to him whether the original Bill, Sir Charles Aitchison's extension, or the modification of it announced by Lord Northbrook, becomes law? For if the principle is sound, it will be unfair to withhold jurisdiction over European British subjects, their wives and daughters, even from the lowest grade of

native Magistrates. What matters it then, if, when the proposed modified Bill becomes law, Mr. Dutt be the only native to whom it will give jurisdiction over European British subjects, their wives and daughters? It is not that we personally object to Mr. Dutt, or to Mr. Gupta, or to any other particular Babu. It is that we object to each and all of them as the embodiment of the principle of the Bill, which, with all due deference to Mr. Reynolds. I affirm that we have clearly proved, by arguments which the supporters of the Bill have not even attempted to refute, to be essentially bad, vicious and dangerous.

In asserting that the Bill modified as announced by Lord Northbrook appears to him to be a perfectly harmless measure, Mr. Reynolds has clearly failed to see the point of the opposition. Lord Northbrook said that Lord Ripon would affirm the principle of the Bill by passing it in a modified form. But why should he pass it in a modified form, if, by passing it at all, he affirms the principle? The reason is obvious. The object is to secure the votes of those who, in the words uttered by Mr. Reynolds on the 9th March last, "feel considerable doubt whether the first section has not been too widely drawn, and whether it would not have been better to restrict the operation of the measure to officers, whether Covenanted Civilians or not, who might be actually appointed to be Sessions Judges or District Magistrates." Having by this apparent concession secured the votes of all those who approve of Mr. Reynolds' sentiments, the Government of India will feel secure of a majority of votes in favour of passing the Bill. The Bill being passed the principle which I have quoted above from the "Statement of Objects and Reasons" will be affirmed. After that, by means of a short Bill, or a series of short Bills, the Government of India will be able to extend the criminal jurisdiction over European British subjects, their wives and daughters, to every native Magistrate down to the lowest grade. And no one who evinced his approval of the principle of the Bill, even in its modified form, either by a vote in favour of it, or by silence respecting it, will be able to oppose any of those short Bills without being told that his opposition is absurd, because the short Bill merely carries out the principle which he affirmed in evincing his approval of the modified Bill. It is for that reason that the honest opponents of the Bill exercise a wise discretion in opposing the passing of the Bill in any form whatever. Therefore "that the vehemence of the agitation should not be unabated," so far from being a thing to be deplored, as Mr. Reynolds says, is a thing to be rejoiced at, inasmuch as it proves the British community in India to be too clear-sighted to be taken in by shams like the proposed modified Bill, and too honest

and steadfast of purpose to unsay to-day what they said yesterday, without being shown good and sufficient reason for doing so.

It behoves us, then, to enquire whether the opponents of the Bill have had any good and sufficient reason given to them for abating their opposition to the Bill in any form. The arguments used by the very small minority of officials who support the Bill have been so easily refuted, that, were it not for the harm they might do by misleading those who know nothing of India, or very little of it beyond the Presidency towns, it would not have been worth while to refute them. Has then Lord Ripon's treatment of us been such as to induce us, out of deference to him, to abate our opposition? Let us see. In considering this question we must apply to Lord Ripon the legal maxim "*Qui facit per alium facit per se.*" Therefore, to avoid circumlocution, I shall refer to him direct as the person acting, Lord Ripon in his speech on the 9th March last, unjustly insinuated that we had used violence, exaggeration, misrepresentation, and menace towards his Government. The injustice of the charge has been pointed out to him. He has never withdrawn it. In the same speech His Lordship led us to believe that we should have a fair and impartial hearing in Parliament upon the question of the Ilbert Bill. He prevented us from having any hearing at all last session. He is now making a party question of it. In order to obtain an unfair advantage over us in England, he sent home the cooked telegram of the debate in Council, on the 9th March last, and, in order to give the colour of truth to that cooked telegram, he procured it to be sent home as a Reuter's telegram. Through his friends, Messrs. Gladstone and Bright, he has declared that we must be crushed for opposing his lordly will in the matter of the Bill. He kept back from us, as long as he possibly could, the official opinions upon the Bill, and, when he gave them to us, he gave them in such a form that we are left in doubt as to whether we have them all *in extenso* or in an emasculated form. He has prevented the official opinions sent by him to the Home Government from being published, so that, up to the time the last mail left England, the British public had not been officially informed of the contents of those official opinions. He has allowed Mr. Bright to vilify with impunity the Indian Civil Service, because an overwhelming majority of them, in the opinions which he asked them to write, have honestly expressed their true sentiments, which are adverse to the Bill. I ask Mr. Reynolds and every other sensible and honourable man, be he supporter or opponent of the Bill, whether treatment like this, even if it were possible for us honestly to abate our opposition to the principle of the Bill, would be likely to induce us to lessen it.

Mr. Reynolds says he is inclined to take a Conservative view of political questions. I congratulate him on his good inclinations. But we want no English party politics imported into India. The natives are the most Conservative people on earth as between themselves, but the most Radical as regards Englishmen. They would fiercely resent any attempt at levelling the Brahmin down to the Dhêr, or, to use the Hibernian trope of the supporters of the Bill, at levelling the Dhêr up to the Brahmin. But when the Viceroy proposed (still to use the Hibernian trope of the Government) to level all natives up above his countrymen, he became to them a second Daniel come to judgment. We then had the curious sight of a Radical Viceroy playing into the hands of Conservative natives, and aiding them to degrade not only his Conservative, but also his Radical countrymen. But it is a notorious fact that they who will have to bear the brunt of the Ilbert Bill were, most of them, Radical, when they left England, and among the other opponents, as well as among the short-sighted supporters of the Bill, *who will eventually feel its oppression, are also many Radicals.*

Mr. Reynolds says that at first sight it seems to him somewhat improbable "that wealthy members of the peerage, like the Viceroy and Lord Northbrook, should be engaged in a conspiracy to ensure the triumph of democracy and communism." But if Mr. Reynolds will study Lord Ripon's political career, from 1843 to the present time, many things will be made clear to him, which he now sees only through a glass darkly. He will then no longer feel bewildered at the apparent inconsistencies of Lord Ripon's policy, nor will he be deceived by such falsehoods as that successive Ministers of State, successive Viceroys, successive Parliaments, and Her Majesty the Queen have repeatedly pledged the faith of England to subject British men and British women to the jurisdiction of native Magistrates. *I style these falsehoods, because I* have already proved them to be so in my letter exposing Dr. Hunter's fallacies in the *Times*, published by you on the 9th instant. I must refer Mr. Reynolds to that letter for proof of my assertion, for I cannot trespass upon your valuable space by repeating my argument every time a supporter of the Bill chooses to reiterate the fallacy.

In conclusion allow me to say that I have not accused Mr. Reynolds of what he complains, nor am I aware that any other opponent of the Bill has done so. But I do think that he has been misled by those who are more subtle than he is. I therefore strongly exhort him to abide by the opinion expressed by him at the end of his speech on the 9th March last, and to avoid being made a *particeps criminis* by supporting the Government in incurring what he then truly called "the serious responsibility of asking the Council to pass the Bill."

November 27, 1883. BRITANNICUS.

LORD HARTINGTON, LORD RIPON AND THE ILBERT BILL.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—At length we are put in possession of another fact which has long been unfairly concealed from us. Pressure has evidently been put upon Lord Hartington by the Council of the Secretary of State for India, and he has been compelled to admit that they were opposed to the Ilbert Bill when it was submitted to them as his advisers, and that they warned him of its danger.

With reference to Lord Hartington's statement, allow me to call attention to the fact that on the 9th March last, Lord Ripon, speaking of Sir Ashley Eden, said :—"He went straight from the Government of Bengal to the Council of the Secretary of State at Home; he was a member of that Council when our proposals were submitted to and sanctioned by the Secretary of State, and therefore, if we had misinterpreted his view, as my honourable and learned friend appears to think, or if we had acted hastily on his opinion—he would undoubtedly have said so, and I cannot for a moment think that my noble friend, Lord Hartington, would not have communicated the fact to me; he certainly did not do so." It is quite clear then, that when those words were uttered either Lord Hartington or Lord Ripon was guilty of a *suppressio veri*. If Lord Hartington had not informed Lord Ripon that his Council were opposed to the Bill and had warned him of its danger, he was guilty of having suppressed a truth of vital importance in the matter of the Bill. If, however, Lord Hartington had informed Lord Ripon of that fact, Lord Ripon, in suppressing it when making the statement above quoted about Sir Ashley Eden, was guilty of an equally flagrant *suppressio veri*. Lord Ripon was also in that case guilty of something more than a *suppressio veri* in saying that Lord Hartington "certainly did not do so," for Sir Ashley Eden, being a member of the Council who opposed the Bill and warned Lord Hartington of its danger, could not truly be said not to have affirmed that Lord Ripon had misinterpreted his view.

Should the latter alternative prove to be the case (and we must leave Lord Ripon and Lord Hartington to settle that question between them) we shall be justified in saying that conduct such as this is worthy only of a Viceroy who allowed Mr. Quinton, in his speech in the Legislative Council on the 9th March last, to state, without contradiction, that there was a strong array of official opinion in support of the Ilbert Bill, and that the Local Governments had "all written in no qualified terms expressing their approval of it," though Lord Ripon well knew, at the time when Mr. Quinton was uttering those words,

that, so far from the Local Governments having approved of that Bill, it had not even been submitted to them for their approval, as was subsequently pointed out by the Governors of Madras and Bombay, the Chief Commissioner of Assam, and others.

Well then may we exclaim, in the vigorous and truthful words of Sir Bartle Frere, that the advocacy of the Ilbert Bill has been nothing but misrepresentation throughout, and that it has been marked by incidents some of which fill us with shame as Englishmen.

BRITANNICUS.

December 8, 1883.

THE CONCORDAT.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—I should like to put forward the following important objections to the proposed Concordat.

The verdict of the jury offered to us will not be the unanimous verdict of twelve good men and true, but practically the verdict of a single ordinary British juryman.

The following statement will explain what I mean.—An Indian jury, in cases in which British men and women are the accused, consists of two Englishmen and one native, or three Englishmen and two natives, or four Englishmen and three natives, or five Englishmen and four natives, and the verdict is not, as it is in England, the unanimous verdict of the jury, but the verdict of the majority. Now the influence of a native District Magistrate, or of a native Sessions Judge, will be so great among the native inhabitants of his district that, bearing in mind what Mr. Monro, the Commissioner of the Presidency Division, says a native told him, namely, that "A Bengali's first idea of duty is to please his superiors, not to satisfy his own conscience," it is not unreasonable to believe that the native portion of the jury, in trials before native District Magistrates and native Sessions Judges, will invariably vote in accordance with the summing up of the presiding Magistrate or Judge The verdict then will practically rest upon the opinion of any one of the British jurymen who thinks proper to agree with the native jurors. Therefore the verdict will, as I have stated in my objection, practically be the verdict of a simple ordinary British juryman.

In effect then, a law passed in conformity with the proposed Concordat will substitute for the verdict of a British Justice of the Peace, experienced in weighing evidence, the verdict of an ordinary Englishman with little or no experience in the matter. Now it is no disparage-

ment of an ordinary Englishman to say that the verdict of a Justice of the Peace, who, by daily practice for many years, has become apt and experienced in weighing evidence, is more likely to be correct than his. Therefore the Bill of the Concordat, like the Ilbert Bill itself, will defeat that which the Government said was their "only object," namely, "the impartial and effectual administration of justice."

I do not know upon what authority the *Indian Empire* states that "it is not upon the programme that District Magistrates shall be bound by the verdict of the jury." If his authority for saying so is good, the offer of a jury is a blind, and a Bill drawn up in conformity with the proposed Concordat will practically give native District Magistrates unrestrained criminal jurisdiction over British men and women, which is the very thing against which we have been all along contending.

There is another difficulty, too, which ought not to be overlooked. The evidence of native witnesses is, of course, given in the language of the witnesses, which ordinary British jurors are not likely to understand. There is no such officer as a sworn interpreter in Mufassal Courts. Who then is to interpret the evidence to the British jurors? It is not the duty of the Magistrate or Sessions Judge to interpret the evidence into English, as I once heard a Sessions Judge say. Again, an interpreter appointed for the occasion would be very unsatisfactory, for it is not every English-speaking native who is able to interpret correctly from his own language into English, and a man's liberty may depend upon a correct interpretation of the evidence. The interpreter *pro tem* may, without its being known to the accused or the Court, be interested by relationship to the prosecutor or otherwise in the success of the prosecution, in which case it will be very easy for him to put such a gloss upon his interpretation of the evidence as will make it, as interpreted by him, press harder against the accused than it does in the original. This the interpreter *pro tem* would certainly do, if he saw that the native District Magistrate or Sessions Judge was biassed against the accused, because, as Mr. Monro tells us, he would consider it his first duty to please his superior, not to satisfy his own conscience. But it may be urged that it may be made the duty of the District Magistrate and Sessions Judge to interpret the native evidence to the British jurors. The objection to that is that, if the native Magistrate or Judge has a bias against the accused, he is likely, unconsciously perhaps, but nevertheless likely, so to colour his interpretation of the evidence as to make it press harder upon the accused than it does in the language in which it is given.

Under all the circumstances, then, the grant of a jury in the proposed Concordat is simply a blind to induce the Council of the Defence Association to yield their consent to the proposed modification of the Ilbert Bill, for it is really no concession or safeguard whatever. In fact the Bill of the proposed Concordat practically extends the criminal jurisdiction over Europeans to native District Magistrates and native Sessions Judges *pur et simple*. Therefore in reality the Council of the Defence Association have consented to that against which we have all along been contending. I therefore, on my own behalf, refuse to ratify the proposed Concordat, and I strongly exhort my countrymen also to refuse to ratify it.

BRITANNICUS.

December 28, 1883.

"FAIR PLAY'S" CONTINUED UNFAIR PLAY.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—I have to thank "Fair Play" for the matter, though not the manner, of one part of his second letter. I refer to the passage in which he carps at my saying that the fact of an old diplomatist like Lord Ripon having avoided to state that the Secretary of State in Council had sanctioned the Ilbert Bill, inclines one to the belief that Lord Hartington had *informed* him that his Council disapproved of it. I am thankful, because it gives me an opportunity of supplying an omission in my last letter, namely, the calling attention to the difference between Lord Ripon's utterance on the 9th March last, when the Council of the Secretary of State had not approved of the Ilbert Bill, and his utterance on the 7th December last, when, in deference to Lord Ripon, we must assume that the Council had approved of the proposed modification of it. On the 9th March last Lord Ripon said with reference to the Ilbert Bill · "He" (Lord Hartington) "stated that he had very carefully considered our proposals in Council, and that he gave them his sanction." On the 7th December last Lord Ripon said, with reference to the proposed modification of the Ilbert Bill. "The Secretary of State in Council expressed his concurrence in the proposals of the Government of India." I need hardly point out, except perhaps to "Fair Play," the difference between the expressions "the Secretary of State" and "the Secretary of State in Council," and "the Governor-General" and "the Governor-General in Council." In his former utterance Lord Ripon avoids asserting that the Secretary of State in Council approved of the Ilbert Bill. In his latter utterance Lord Ripon distinctly asserts that the Secretary

of State in Council approved of the proposed modification of that Bill. Why, if there was no difference between the communication recieved by Lord Ripon from Lord Hartington and that receiged by him from Lord Kimberley, did he make this difference in his two statements? I do not think Lord Ripon will thank "Fair Play" if he asserts that the difference was inadvertent. Good diplomatists do not make such distinctions inadvertently. They are never careless in their utterances. If Lord Hartington, in his public as well as in his private communications to Lord Ripon, omitted to state that his Council concurred with him in sanctioning the Ilbert Bill, it must have suggested at least a doubt upon the point to a brother diplomatist like Lord Ripon, a doubt, too, which he could and ought to have solved by telegram before he allowed his partisans to make the groundless boast that there was a strong array of official opinion in favour of the Ilbert Bill. If, indeed, Lord Ripon had any doubt upon the point, he made a great mistake in omitting to telegraph for accurate information, because, if it had turned out that the Council concurred with the Secretary of State, that fact would have greatly strengthened his position. The question then arises, whether an old diplomatist like Lord Ripon, when searching for every possible support for his Bill, was likely to have allowed so important a matter to remain obscured by the clouds of doubt, when a little telegram would have elucidated it. Of course, if, in consequence of the tenor of Lord Hartington's public or private communications, Lord Ripon had no doubt upon the point, there was no need for him to telegraph for further information. If, again, Lord Ripon and his Council, or any of them, believed that the Council of the Secretary of State had approved of the Bill, their silence upon the point on the 9th March last, when they heaped up everything, even apocryphal railway works at Carwar, which they thought would strengthen their case, is most unaccountable; for, in that case, it is contrary to reason to believe that, when Mr. Quinton made his unfounded boast that there was a strong array of official opinion in favour of the Bill, Lord Ripon and every member of his Government would have omitted to make what they would have considered a well-founded boast, by triumphantly pointing out that a body of old and experienced Indian officials, like the Council of the Secretary of State, had approved of the Bill. Therefore it is clear that there is abundance of negative evidence to prove that, on the 9th March last, neither Lord Ripon nor any of his partisans believed that Council of the Secretary of State had approved of the Ilbert Bill. What then was Lord Ripon's belief upon the point? If he had none, but was simply in doubt, why, when he told the Legislative Council that Lord Hartington had sanctioned the Bill,

did he not also tell them that the tenor of his noble friend's communication left him in doubt, if it had so left him as to whether the Council of the Secretary of State concurred with his noble friend or not? If he had done so, some member might have suggested the propriety of telegraphing to the Secretary of State for precise information upon the point, on account of the unfairness of leaving so important a matter in doubt, whilst his Lordship's partisans were incorrectly boasting of a strong array of official opinion in favour of the Bill.

The following point is also worthy of consideration. On the 9th March last Lord Ripon said that, if Sir Ashley Eden had told the Secretary of State, Lord Hartington, that his view had been misinterpreted, he could not for a moment think that his noble friend would not have communicated the fact to him. Since, then, Lord Ripon was sure that Lord Hartington would inform him of the dissent of one only of the members of his Council, he must have been doubly sure that Lord Hartington would inform him of the dissent of the whole of that Council. Was Lord Ripon deceived as to Lord Hartington's communicativeness, or did Lord Hartington fulfil Lord Ripon's expectations? We have learnt from the Accrington recantation that Lord Ripon's "noble friend" deceived the House of Commons. It would, therefore, be interesting to know, if only as a matter of history, whether he victimised Lord Ripon also

"Fair Play" calls my knowledge of the facts stated in my letter "half knowledge." But they are facts known to every one. My knowledge of them was acquired from the recorded words of the persons themselves of whom I stated them. I wonder what "Fair Play" would call full knowledge.

He does not deny my statement of these facts to be true, but he carps at my arguing upon them, and indulges in an inane argument about a bird being either a fish or a vegetable. His reasoning reminds me of that of the "oldest inhabitant," who, on being asked by the Commissioner appointed to inquire into the matter, what he thought was the cause of the Goodwin sands replied, "I have lived here nearly a hundred years. When I was a boy there were no Goodwin sands. Then Tenterden steeple was built, and after that the Goodwin sands were formed. Therefore Tenterden steeple is the cause of the Goodwin sands."

BRITANNICUS.

January 2, 1884.

MR. ILBERT'S FUTILE CHANGE OF FRONT.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—On the 2nd February 1883, Mr. Ilbert, speaking on behalf of the Government and himself, said with reference to his Bill:—"These are our proposals. I repeat that in making them the only object which we have in view is to provide for the impartial and effectual administration of justice. It is by that test that we desire our proposals to be tried." The challenge was accepted. The Bill was tried by that test, and by it condemned.

On the 4th January 1884, Mr. Ilbert, again speaking, or rather reading an essay, on behalf of the Government and himself, said, that the trying of the Bill by that test was a weak point in many of the arguments advanced against the Bill. Then, after quoting extracts, carefully selected, from the opinions of the Lieutenant-Governor of Bengal and the British Judges of the High Court of Calcutta, in which the Bill is tried by the test proposed by the Government and by it condemned, he says:—"The line of argument which I have indicated appears to me to be based on a misconception of the point of view from which we approached, and from which I contend we ought to approach the subject." That point of view, according to Mr. Ilbert, is the fitness point. This sudden change of front would be startling, if we had not become accustomed to such sudden changes of front on the part of the Government in the matter of Mr. Ilbert's Bill.

With reference to Mr. Ilbert's contention that we ought to have tried the Bill by the fitness test, would he be very much surprised to hear that it has been tried by that test also, and by it condemned?

Probably he would, for when quoting extracts from the opinions of the Lieutenant-Governor of Bengal and the British Judges of the High Court of Calcutta, he omitted to quote the following passages in their opinions:—

The Lieutenant-Governor of Bengal says:—"But the question has to be met whether the legislation contemplated is justified by the fitness of the native judiciary for the powers which it is proposed to confer upon them, and in the Lieutenant-Governor's judgment the answer must be in the negative."

The Judges of the High Court of Calcutta say:—"If as the Hon'ble Member (Mr. Ilbert) says, the trial of Europeans is apt to put an exceptionally severe strain on the judicial qualities of tact, judgment, patience, and impartiality, it is difficult to understand how the interests of justice can be promoted by committing those cases to officials who are regarded, and the Judges think rightly regarded, as less qualified

to deal with them than those who at present are empowered to do so"

From a special pleading point of view Mr. Ilbert, perhaps, considered himself justified in omitting to quote the above passages in the opinions of those who, he says, have overlooked the fitness test. As he appears to be an adept at special pleading, I suppose he knows best, but from a common sense point of view it appears to be a very short-sighted ruse, because it is so easily exposed. I now proceed to quote from the opinions of other eminent opponents of the Bill who, Mr. Ilbert says, have overlooked the fitness test.

The Acting Chief Justice of Bombay says :—"I deny that a native Judge or Magistrate, whether a Covenanted Civil Servant or not, is fit to try a European British subject. He is in my opinion quite incompetent."

Lord Ulick Browne, Commissioner of the Rajshahye and Cooch Behar Division, says :—"As I consider a native Civilian who has entered the service by competition unfit to exercise the powers with which it is proposed to invest him, it may be imagined that I told this view much more strongly in the case of natives appointed to the Civil Service in this country on mere nomination."

I could quote many other opinions of eminent Indian officials to the same effect, but my letter would occupy too much of your valuable space were I to do so. I will, therefore, content myself with giving the names of a few of the most eminent of the number :—Mr. G. N. Barlow, C.S.I., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs ; Mr. J. Beames, Commissioner of the Burdwan Division, and Mr. J. Monro, Commissioner of the Presidency Division.

But lest it should be said that, in quoting the opinions of only the opponents of the Bill, I have stated a one-sided case, I proceed to quote the opinions of the most eminent of the supporters of the Bill, and I will begin with Sir Charles Aitchison, its most thorough-going supporter.

Sir Charles Aitchison says :—"Probably even the most thorough-going supporters of the Bill would admit that Englishmen, as a class, are better qualified to be judges of their countrymen than natives are."

Mr. Justice West, of the Bombay High Court, says :—"Now it would be a foolish thing to suppose, as some natives do suppose, that the ordinary Englishman has not gained a great advantage over the ordinary Asiatic by the constitutional training which is for him the inheritance of so many centuries. Justice is more in reality a matter of temperament, of tradition, and training than of mere cleverness."

Mr. W. B. Jones, the Chief Commissioner of the Central Provinces, says:—"That the European is generally fitter than the native to try cases in which Europeans are accused appears to me to be abundantly clear."

Colonel C. A. McMahon, Commissioner and Superintendent of Amritsar Division, says:—"The state of morality in India is much lower than in England, and, as men judge of others by themselves, natives believe readily imputations against Europeans that we ourselves would only credit on extremely strong evidence."

Mr. A. J. Lawrence, Officiating Commissioner of the Allahabad Division, says:—"Is the Government prepared to say . . . . that the classes of natives to whom the Bill proposes to give the powers of a Justice of the Peace are in every way fitted to exercise those powers? This is, I think, the test by which the Bill must be judged, and by it, I think, the Bill stands condemned."

Sir R. Stuart, Chief Justice of the Allahabad High Court, says:—"Appealing as it" (the criminal law) "does to considerations relating to idiosyncracy, temper, and temperament, moral appreciation of crime, consciousness of guilt or innocence, social degradation as the consequence of proved guilt, and the strange difference in this respect between the moral sense of the European and that of the natives. All these are very delicate considerations, and it is not easy to appreciate the opinion that they could be safely handled even by the most highly educated Native Magistrate in trying a European for an imputed offence against the criminal law."

Such are the opinions of some of the most eminent of the supporters of the Bill. They coincide upon the question of fitness with the opinions of the opponents of the Bill. Therefore we are entitled to say that the fitness test has been applied to the Bill both by its supporters and opponents, and as Mr. A. G. Lawrence correctly states, by that test the Bill stands condemned.

I venture to think that no one will deny that the best, nay the only, way to provide for the impartial and effectual administration of justice in cases in which British men and women are the accused, is to employ the fittest officials to administer the law in such cases, and that, if, in addition to the fittest, any officials less fit than the fittest be employed upon that work, justice will be less impartially and less effectually administered than it would be if only the fittest were employed upon it. Now it has been proved by the testimony both of the supporters and opponents of the Bill that native officials are less fit for that work than British officials. But the Ilbert Bill proposes to entrust that work to native officials in yearly increasing numbers.

Therefore, if that Bill becomes law, it will defeat the object which the Government say they have in view, for under it justice must inevitably be less impartially and less effectually administered than it is under the present law. Ergo, the Bill stands condemned by the fitness test as well as by the test originally proposed by Mr. Ilbert on behalf of the Government and himself on the 2nd February 1883

BRITANNICUS.

January 11, 1884.

THE END OF THE ILBERT BILL.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Allow me to express my gratitude to you for the very kind and handsome way in which you, on the 11th instant, editorially noticed my exertions in the matter of the opposition to the Ilbert Bill. That it is the hope of reward which sweetens labour may be true, but I never had any such hope, unless the almost forlorn hope of our opposition becoming successful may be so termed. I can therefore truly say that I never hoped for, much less expected, so handsome a reward as that editorial acknowledgment of my services. Indeed I had considered myself already sufficiently rewarded by having been allowed to occupy so much of the valuable space of a journal second to none in India for the breadth and soundness of its views, and the gentlemanly tone of its editorials.

At the same time permit me to express my grateful acknowledgments to all those gentlemen who, at various meetings, have, from time to time, encouraged me, by votes of thanks, in my, at one time, almost hopeless task of opposing the Ilbert Bill.

To the Council of the Defence Association, and especially to their able President, Mr. Keswick, is justly due the honour of having by their judicious action obtained the virtual abandonment by Government of the principle of the Ilbert Bill. To them, therefore, our warmest thanks are due, and on my own behalf I hereby tender them.

But, whilst paying honour to all to whom it is due, let us glorify Him who has crowned our efforts with success by saying in the pious words of a noble Order,—*Non nobis, Domine, non nobis, sed Nomini Tuo da gloriam.*

January 22, 1884. BRITANNICUS.

THE CONCORDAT.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—It is very desirable that they who are hesitating should fully understand the extent of the victory obtained by the Council of the

Defence Association by means of the Concordat. With your permission, then, I will endeavour to explain it.

The Council of the Defence Association have by means of the Concordat, obtained the virtual abandonment by Government of the principle of the Ilbert Bill, notwithstanding Lord Ripon's declaration to the contrary in his speech in the Legislative Council on the 7th instant. In order to prove this it is necessary first to state correctly what is the principle of that Bill, and then to point out how it has been abandoned.

With all due deference to Lord Ripon I submit that, in his speech above referred to, he incorrectly stated the principle of the Ilbert Bill. That principle is contained in the first part of the second paragraph of the "Objects and Reasons."

The second part of that paragraph, from which Lord Ripon quoted, contains a declaration of the action which the Government had then decided upon taking in accordance with that principle. That that is so is indicated by the commencement of the second part of that paragraph, which runs thus:—"The Government has accordingly decided to settle," &c.,—Decided in accordance with what? The only possible answer is,—In accordance with the principle declared in the first part of the same paragraph. Now the principle therein declared is as follows:—"That the time has come for modifying the existing law and removing the present bar upon the investment of native Magistrates in the interior with powers over European British subjects." Mark, there is no restriction as to the grade of the Magistrates to be invested with those powers. Therefore the principle of the Ilbert Bill is,—that the time has come for investing native Mufassal Magistrates of every grade, from the highest to the lowest, with power to try European British subjects accused of criminal offences. It matters not that the Ilbert Bill did not propose to carry out that principle to its fullest extent; for if Lord Ripon's Government had succeeded in passing a Bill founded upon that principle, which conferred the power of trying European British subjects upon one native Magistrate only, the principle of the Ilbert Bill would have been affirmed, and the extension of the power to every other Mufassal Magistrate from the highest to the lowest would have been only a question of time.

Let us now inquire whether the Bill drawn in accordance with the terms of the Concordat invests any native Mufassal Magistrate or Sessions Judge with power to try European British subjects. I submit that it does not. It takes away the power of trying them heretofore possessed by British District Magistrates and Sessions Judges, but it does not confer it upon a single native Mufassal Magistrate or

Sessions Judge. All that it does is to empower native District Magistrates and Sessions Judges to preside at the trial of European British subjects by a jury. It is not the native District Magistrate or Sessions Judge, but the jury, who try the accused. The oath administered to each of the jurors proves this to be the case. It runs thus,—"You shall well and truly try, and true deliverance make," &c. The native District Magistrate and Sessions Judge are powerless to convict. The jury alone are invested with the power to try, and convict or acquit the accused. The native District Magistrate or Sessions Judge may sum up ever so strongly for a conviction, yet if the jury are honestly of opinion upon the evidence that the charge is not proved, it is their duty to deliver a verdict of "not guilty." They must, of course, pay all due deference to any remarks which the District Magistrate or Sessions Judge may make upon the evidence, and accept his interpretation of the law bearing on the case, but it is not only not their duty, but a violation of their oath, obsequiously to relinquish their own honest opinion in deference to him. Therefore it is abundantly clear that the Bill drawn in conformity with the terms of the Concordat does not invest any native Mufassal Magistrate with power to try European British subjects. This is as it should be, especially as regards District Magistrates, for since "persons executing any duties of Police or entrusted with Police functions" are, by the Code of Criminal Procedure, disqualified from serving as jurors, [*à fortiori* District Magistrates, who are entrusted with the highest Police functions in their Districts, ought to be disqualified from trying persons accused of criminal offences.

Since then, the Bill drawn in accordance with the Concordat does not invest any native Mufassal Magistrate or Judge with power to try European British subjects, it virtually declares that the time has not come for investing them with that power. But the principle of the Ilbert Bill is that the time has come for investing them with that power. Therefore, by passing the Bill drawn, in accordance with the terms of the Concordat, the Government virtually abandons the principle of the Ilbert Bill.

The Government of India, lately insisting upon having its Ilbert Bill, may be likened to a fractious child insisting upon having a dangerous toy. As the cautious father carefully removes the hurtful parts before allowing the child to have the toy, so the cautious Council of the Defence Association carefully removed the dangerous part of the Ilbert Bill, namely its principle, before allowing the fractious Government to have it.

That there are defects, not in the Concordat, but in matters connected therewith, is certain. It is to be hoped, however, that the Council of the Defence Association will be able to get them removed. One of them, pointed out by me in a former letter, has reference to the Indian jury system, upon which, with your permission, I will dilate in my next letter.

BRITANNICUS.

January 24, 1884.

MR. JUSTICE FIELD'S MINUTE.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Mr. Justice Field's Minute on the Ilbert Bill is so valuable a document that I hope it will be published in pamphlet form. If the learned Judge consents to its being so published, I shall be most happy to enrol myself as a subscriber.

Permit me, however, to ask the learned Judge to do me the justice to correct note (*a*) to paragraph 72 of his Minute; for the view which, he says has not (as far as he can find) been put forward, but which may deserve consideration, was brought by me to the notice of Government so far back as the 19th March 1883 in my letter of that date, published by you on the 26th of the same month. In that letter you will find the following passage :—

"Mr. Quinton lost a capital opportunity of proving himself to be a sharp-sighted eye and quick ear of Government by omitting, when he was in the questioning mood, to propound the following questions to the Legislative Council.—

I.—Did the Aryan conquerors of India empower the Sudras and other conquered races to try *Brahmans, Kshattriyas* and *Vaisyas*, and their wives and daughters, and sentence them to fine or imprisonment, or both?

II.—Did the Muhammadan conquerors of India empower the Hindus to try Muhammadans, their wives and daughters, and sentence them to fine or imprisonment, or both?

III.—If not, why not? Was is not because in India and other Asiatic countries such power is the outward and visible sign of sovereignty, and the transfer to a conquered race of the right to exercise it upon the dominant race is an abdication of that sovereignty in favour of the former?"

I am very happy to find that the learned Judge's able Minute has stamped as accurate many of the views published by me, and I especially rejoice that he has upheld as correct the interpretation of the Statute 33, Geo. III, Cap. 155, Sec. 105, contained in my letter of the

25th November last, published by you on the 30th of the same month, in which I took the liberty of differing from Mr. Justice Mitter's interpretation of that Statute.

BRITANNICUS.

January 22, 1884.

TRIAL BY JURY.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Trial by jury being intimately connected with the Criminal Procedure Amendment Act of 1884, it may not be considered inopportune at the present time to comment upon it with the view of maintaining to the utmost of our power that valuable institution in all its right, of restoring it to its ancient dignity in matters in which it has been impaired or otherwise diverted from its first institution, and above all of guarding with the most jealous circumspection against the introduction of new and arbitrary methods of trial, which, under a variety of plausible pretences, such as administrative inconvenience, invidious distinctions, pledges, &c.,&c.,&c., none of which are founded on fact, may in time imperceptibly undermine this best preservative of British liberty; for this, says that celebrated jurist, Sir William Blackstone, is a duty which every man owes to his country, his friends, his posterity, and himself. I therefore strongly recommend the Council of the Defence Association to give the matter their most earnest and patient consideration.

My countrymen will doubtless acknowledge the wisdom of Blackstone's advice, when they call to mind that the supporters, of English extraction but un-English proclivities, of the happily defunct Ilbert Bill, whose position in the Government of India and in the Supreme Legislative Council ought to have reminded them that they were *ex-officio* custodians of the rights and liberties of their countrymen, sneered at our claim to the right and privilege of being tried by our peers, and violated the trust reposed in them by endeavouring to deprive us of it. In so acting they forgot, if they ever knew, the excellent maxim enunciated by Montesquieu that "Princes ought to be overjoyed to have subjects to whom honour is dearer than life, an incitement to fidelity as well as courage." One of those un-English Englishmen, the one who broke a pledge publicly given by him in the Supreme Legislative Council on the 9th March 1883, made, in a letter to the *Times*, the boast that the present Government of India was prepared, with the aid of the votes of the native members of the Supreme Legislative Council, to enact a law subversive of our rights and liberties

which the Government of 1872 was unable to pass, because there were then none but English members in that Council. Let me recommend that would-be subverter of British liberties to suggest to Mr. Caucus Chamberlain, in the coming redistribution of seats to allot to native members of Parliament, to be elected in India, a number sufficient to swamp the English members, and with their aid to attempt to subvert the ancient rights and liberties of the people of England. If such an attempt be made, I venture to think that the result, for such a Parliament, will be a far more successful 5th of November than that of Gunpowder Plot notoriety.

The following passage from the learned author above referred to, will clearly show how important to us is the privilege of trial by our peers, especially under a despotic Government like that of India, the members of which have given us abundant proof of their hostility to our ancient rights and liberties. "The trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law * * * * * * * * * * It is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals. A constitution that, I may venture to affirm, has under Providence secured the just liberties of this nation for a long succession of ages."

An Englishman's privilege to be tried by his neighbours and equals is of older date indeed than Magna Charta itself, for long before that great Charter was wrested from King John, Englishmen had acquired the right by prescription. During the Saxon period they obtained it by an agreement between the people and the King, on whom they conferred sovereign power. The Norman barons had no title to the benefit of those laws which were infringed by the very nature of the tenure by which they held their lands from the Crown. They acquired those liberties, however, by a charter granted by Henry I, which, though confirmed by Stephen, was never observed until they forced King John, in the year 1215, to grant to the nation the two famous Charters called *Magna Charta* and *Charta de Foresta*, which are the foundation of the English liberty and constitution, or rather the confirmation and augmentation of those ancient rights and privileges which Englishmen had enjoyed under the Saxon monarchs; for, as Sir Edward Coke observes, Magna Charta contained very few grants, but was for the most part declaratory of the principal grounds of the fundamental laws of England.

Conciseness and not plagiarism being my aim, allow me to say once for all that I am indebted to Blackstone, Smollett, Montesquieu and

others for the facts and authorities cited by me in this letter in connection with the origin and antiquity of trial by jury. This will save the necessity for inverted commas and continual reference to authorities, which will, however, be quoted when necessary.

Some authors have endeavoured to trace the origin of the institution of trial by jury as high as the ancient Britons. It is certain, however, that it was in use among the first Saxon colonies of Britain. *Bishop Nicholson ascribes its origin to Woden himself, their great* Legislator and Captain (DeJure Saxonum, p. 12). Traces of it are found in the laws of all those nations who adopted the feudal system, as in Germany, France, and Italy. The duty of a vassal towards his lord was to bear arms and to try his peers in his court. The Judges, Rathimburghers, and Sheriffs were the same persons under different names. They were the count's assistants, and, as he was obliged to have twelve persons to judge, he filled up the number with what in the authorities are styled *boni homines*, respectable men. Sometimes there were no officials on the jury. In that case the twelve jurors were all *boni homines*. Information on this subject is contained in the capitularies of Louis the Pious added to the Salic law, Art. 2 ; in the formula of judgments given by Du Cange in the word *boni homines ;* and in the appendix to the formularies of Marculfus, Cap. 51. In England the institution is mentioned so early as King Ethelred, and that not as of recent origin (Wilk. L. L Angl. Sax. 117). The Saxon chronicles inform us that King Alfred compiled an excellent body of laws from the collection of his predecessors Etherlred, Ethelbert, Ina, and Ossa. He improved the institution of trial by jury by specifying the number and qualifications of the jurors, and extended their power to trials of property as well as criminal indictment. He originated the practice of giving bail to save persons who might be found innocent from suffering imprisonment during their trial. Stiernhook ascribes the institution of the jury, which in the Teutonic language is called *nembda*, to Regner, King of Sweden and Denmark, the contemporary of our King Egbert, who began to reign A.D. 800 (De jure Sueonum L 1. Cap. 4). But the fact is that trial by jury was so universally established among all the Northern nations of Europe that the earliest account of the one gives also traces of the other. Therefore an Englishman's right to trial by his equals and neighbours, that is to say, by his own countrymen, rests not upon Magna Charta only, but also upon prescription or usage from a time to which the memory of man ran not to the contrary even in A. D. 1215, when the Great Charter was extorted from King John. Consequently, the right to trial by his equals and neighbours, that is by his own countrymen, may without exagge-

ration be said to be ingrained in the very nature of an Englishman.

Magna Charta was confirmed in Parliament by King Henry III, King John's son and successor, and afterwards by Statute 25 Edw. I., called *Confirmatio Cartarum*, whereby the Great Charter is directed to be allowed as the common law. It was next confirmed by a multitude of corroborating statutes (Sir Edward Coke enumerates about 32), and lastly by statute 12 and 13 Gul. III, Cap. 2, styled, "The Act of Settlement," whereby, among other things, the right and privilege of trial by their equals and neighbours was declared to be the "birth right of the people of England" according to the ancient doctrine of the common law.

In these days of innovation and attempts on the part of the Government of India to introduce arbitrary and unconstitutional methods of trial, upon the ground of convenience and other plausible pretences, my countrymen will do well to be always on their guard against the encroachments which that despotic Government has, during the last fifty years, proved itself to be ever ready to make upon their liberties. The fact of those liberties having been wrung at the point of the sword from a weak-minded despot like King John, ought to remind them that further attempts may be made to withdraw from them the liberties so extorted. For it is not so much the tyrannical man as the weak-minded man who mistakes his own obstinacy for strength of mind, that, when in power, is the worst oppressor. In connection with this subject, the following words of wisdom deserve special attenion. Blackstone, in pointing out the danger of allowing the introduction of arbitrary and unconstitutional methods of trial says.—"However *convenient* these may be, as doubtless all arbitrary powers well executed are the most *convenient*, yet let it be again remembered that delays and little inconviences in the forms of justice are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon the sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread to the utter disuse of juries in questions of the most momentous concern."

The excellence of Blackstone's advice will be apparent to all who call to mind that the Government of India, during the late controversy on the Ilbert Bill unblushingly alleged, as a ground for encroaching upon our liberties in 1883, that it had successfully encroached upon them in 1836 and 1875, and its mental vision was so distorted by the system of encroachment it had adopted, that it actually thought that argument a sound one. With equal justice a thief might urge that,

because he had stolen your watch last week with impunity, he is entitled to steal your purse this week. It was high time then for us to have an organisation like the Defence Association to protect our rights. That the Council of that Association has not only the will but the power to do so, if we give them our cordial support, the destruction by them of that source of all recent evil, the principle of the Ilbert Bill, fully proves. Let us all then rally round them and help them with all our might to progress in the good work so ably begun.

The following facts will show how our rights were encroached upon in 1836. When Her Majesty's Supreme Court of Judicature at Fort William in Bengal was first established in Calcutta, trial by Jury in civil suits was not introduced, but the Judges performed the functions of the jury in deciding upon the evidence and assessing the damages in addition to their own proper functions. This, of course, was an encroachment upon our rights to trial by jury in civil cases. The unofficial British community of that day, however, tacitly consented to that encroachment being made in favour of Her Majesty's Supreme Court of Judicature, because they had perfect confidence in the ability, integrity, and impartiality of the honourable Judges of that Court. This tacit consent in favour of the Supreme Court no more implied a waiver of our right in favour of any other court, than the fact of a man failing to object to a neighbour encroaching upon his land, would imply a waiver of his rights in favour of strangers. But in passing Act XI of 1836, the Government of India virtually argued that it did. This, of course, was illogical, but despotic Governments are not in the habit of paying much attention to logic in their arguments in support of any course of action they propose to adopt. Of that fact the arguments used by the Government of India in support of the happily defunct Ilbert Bill and the Bengal Tenancy Bill afford abundant proof. For example, in support of the Ilbert Bill it was argued that, because the Government of India had made two inroads upon our rights and liberties with impunity, namely by passing Act XI of 1836, which virtually abolished trial by jury in civil suits, and by passing Act X of 1875, which virtually abolished trial by jury in criminal cases, therefore, it had a right to make a further inroad upon our rights and liberties in 1883, by passing the Ilbert Bill. And in support of the Bengal Tenancy Bill it is argued that because the Government of India, by Act X of 1859, made an inroad upon the rights of zemindars with impunity, therefore it is entitled to make a further inroad upon their rights in 1884, by passing the Bengal Tenancy Bill. If a poacher charged with unlawfully killing Lord Ripon's pheasants were to plead that his grandfather had poached upon

His Lordship's preserves with impunity in 1836, and his father had poached upon them with impunity in 1875, therefore he was entitled to poach upon them with impunity in 1884, would His Lordship admit the plea to be good? I trow not; and yet that is what the arguments of the Government of India in support of the Ilbert Bills Nos. 1 and 2, amount to. Since, then, we had never waived our right, to trial by jury in civil suits, the Government of India, by arbitrarily passing Act XI of 1836 in opposition to our protests, made "an inroad upon the sacred bulwark of the British nation, fundamentally opposite to the spirit of the constitution" If the proposal had been to subject us in civil matters to the jurisdiction of English Mufassal Judges only, we might, for obvious reasons, have been induced to waive our right to trial by jury in civil cases in their favour. But the Act unconstitutionally handed us over to the jurisdiction of native Mufassal Judges, also in whose Courts, Dewan Joy Prakashlal, Rai Bahadur, informed us lately in his speech at the meeting held at Bankipur to oppose the Bengal Tenancy Bill, *all phases of rascality are prevalant*, and in which, in addition to the legal fees, there are a number of *unmentionable etceteras* which are irrecoverable even by the successful party. Therefore our protest made in 1836 still holds good, and usage cannot be pleaded against us, because we have submitted to the law upon compulsion and under protest.

The fact of the Government of India having argued that because they had succeeded in encroaching upon our rights in 1836 and 1875, therefore they had a right to encroach still further upon them in 1883, proves that we cannot safely disregard Blackstone's excellent advice "above all to guard with the most jealous circumspection against the introduction of new and arbitrary methods of trial, which under a variety of plausible pretences may in time imperceptibly undermine this best preservative of English liberty."

In passing Act X of 1875, now enbodied in Act X of 1882, the Government made "an inroad upon the sacred bulwark of the British nation fundamentally opposite to the spirit of the constitution," for by that Act, they abolished trial by jury in criminal cases. I use the word "abolished" advisedly, for, though they left the name, they took away the substance. With singular inconsistency they, in Section 32, prescribed that: "All trials under this Act shall be by jury" and then, in Sections 33 to 37, they virtually abolish trial by jury, and substitute for it trial by a thing which is not a jury as defined by the common law, or such as the Act of Settlement declares to be the birth-right of every Englishman. A comparison of the true thing with the Brummagem article substituted for it, will prove the truth

of this assertion. Blackstone thus describes trial by Jury :— "The founders of the English law have, with excellent forecast, contrived that no man should be called to answer to the King for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow-subjects, the grand jury ; and that the true of the very accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbours indifferently chosen and superior to all suspicion." And in another place he says : "So tender is the law of England of the lives of subjects, that no man can be convicted at the suit of the King of any capital offence, unless by the unanimous voice of twenty-four of his equals and neighbours, that is, by twelve, at least, of the grand jury, in the first place, assenting to the accusation, and afterwards, by the whole petit jury, of twelve more, finding him guilty upon his trial." The thing which the Government of India has substituted in the High Court for this trial by jury is one in which, for the preparatory accusation of twelve of the grand jury, they have substituted the opinion of a single Judge of the High Court, and for the unanimous suffrage of twelve of an Englishman's equals and neighbours, they have substituted the opinion of two-thirds of nine men, all of whom may be natives, unless the accused Englishman, before the first juror is called and accepted, requires to be tried by a mixed jury, in which case only is it obligatory for the majority of the jurors to consist of Europeans and Americans. But since the word "Europeans" and not "Englishman" is used, it is possible for an Englishman, under the Act, to be tried by a jury consisting entirely of natives, or of five foreigners and four natives. Thus, in the first place, the Act abolishes the Grand Jury, an institution of the existence of which, so far back as the reign of King Ethelred, we have authentic information. In that Saxon monarch's laws it is thus described .—"*Eveant seniores duodecim thani, et praefectus cum eis, et jurent super sanctuarium, quod eis in madus datur, quod nolint ullum innocentem accusare, nec aliquem noxium celare.*" (Wilk. L. I., Angl. Sax. 117). "The twelve seniors shall go out, and their foreman with them, and shall swear upon the Holy Gospel which is placed in their hands, that they will not accuse any innocent, or conceal any guilty man." The number of the Grand Jury was afterwards raised to 23, a majority of 12 of whom was required to find a true Bill. By passing this Act the Government of India proved that it had neither the excellent forecast of the founders of the English law, nor such tenderness for the lives of the subjects as the law of England possesses. And, in the second place, the Act abolishes the petit jury. For the

powers with which the Indian Legislature has been invested, great though they be, no more enable it to convert, even by an Act of the Government of India, a body of nine men all of whom may be natives, or natives and foreigners, two-thirds of whom are competent to deliver a verdict, into a jury, than they enable it to convert nine apples, or two-thirds of nine apples, into twelve pears. Therefore their calling these nine men a jury in the Act, does not make them a jury, for by the common law a jury is defined to be twelve of the equals and neighbours of an accused Englishman, whose verdict must be the unanimous opinion of the whole number. Consequently the Indian Legislature, in enacting by Act X of 1875, that accused Englishman may be tried by nine natives, or by four natives, and five European and American foreigners, contradicted Section 32 of the same Act which declares that "All trials under this Act, shall be by jury." Well then may we lament, with Sir Edward Coke, the confusion introduced by ill-judging and unlearned legislators interfering with the common law.

Natives and European, and American foreigners were admitted upon juries for the trial of Englishmen by what appears to be a mistake on the part of our legislators. By Statute 13, Geo. III, Cap. 70, Sec. 34, it was enacted, "that all offences and misdemeanours which shall be laid, tried, and inquired of the Supreme Court of Fort William in Bengal, shall be tried by a jury of British subjects, resident in the Town of Calcutta, and not otherwise" This statute applied to persons not being Englishmen, for Englishmen being already entitled to be tried by a jury of British subjects, or Englishmen, any enactment on the subject affecting them would have been supererogatory By Statute 7, Geo. IV., Cap. 37, Sec. 1, it was enacted "that all good and sufficient persons resident within the limits of the towns of Calcutta, Madras, and Bombay, and not being subjects of any foreign State, shall be deemed capable of serving as jurors," &c. This statute enabled native subjects of the East India Company, but not foreign natives or European or American foreigners, to serve on juries in Calcutta, &c. But by Section 3 of the same Act, it was enacted "that all juries for the trial of persons professing the Christian religion shall consist wholly of persons professing the Christian religion." The last recited section, however, was repealed by Statute 2 and 3 Gul. IV, Cap. 117, Sec. 2. But, since the right and privilege of an Englishman to be tried by a jury of his equals and neighbours did not rest upon the Statute 7, Geo. IV., Cap. 37, but, as I have proved, upon prescription confirmed by *Magna Charta*, which again has been confirmed by several statutes, and lastly by the Act of Settlement, which declares

trial by their peers to be the birth-right of the people of England, according to the ancient doctrine of the common law, the repeal of 7 Geo. IV., Cap. 37. Sec. 3, though it abolished the privilege granted thereby to Christians of other nationalities, in no way affected the ancient right and privilege of an Englishman to be tried by a jury of his equals and neighbours. This brings us to the question whether natives are the equals and neighbours of Englishmen.

I have no wish to re-open the racial question by any arguments of my own. I shall therefore confine myself to the arguments with which the Government of India has furnished me. That Government, by excluding natives from all the highest civil offices in the State, from all military commands, and from all appointments which would give them the control of Departments as the heads thereof, and reserving all those appointments for Englishmen, as well as by excluding natives from the benefit of the Habeas Corpus Act, to which Englishmen are entitled, virtually declares that natives are not the equals of Englishmen. Neither are natives the neighbours of Englishmen in the sense in which Blackstone uses the word in the above quotation, in which it does not necessarily mean persons who live in the same street, or even in the same neighbourhood, as the accused, but people whose manners and acustoms are the same as his, whose thoughts are his thoughts, and whose ways are his ways, and who are, therefore, better able than those who are aliens to him in every sense of the word, to arrive at a correct opinion upon his guilt or innocence, especialy in cases in which the evidence is chiefly or altogether circumstantial. In this sense natives are decidedly not the neighbours of Englishmen. This unneighbourliness is not the fault of the Englishman, but is derived from purely native sources. What Mr. Laister says of the Hungarians and Hungarian Jews is applicable to Englihmen and natives. The Englishman cannot love natives as neighbours because they will not be neighbourly, and natives on their parts cannot be neighbourly because their caste, creed, and customs, while they permit them to make all they can out of the Englishman, forbid them to have anything in common with him, or to admit him to that social intercourse in their houses which Englishmen enjoy with one another. Therefore it is no disparagement of natives or of the estimable qualities which some of them possess, to say that they are not the equals and neighbours of Englishmen in the sense in which the jurors by whom an Englishman has a right to be tried ought to be, in order to fulfil the requirements of the privilege acquired by prescrption, and confirmed by the Great Charter. Therefore, the Government of India, in passing Act X

of 1875, introduced a new, arbitrary and unconstitutional method of trial, instead of trial by jury, and thereby made "an inroad upon the sacred bulwark of the English nation, fundamentally opposite to the spirit of our constitution," which, unless the utmost vigilance is used to prevent it, "may increase and spread to the utter disuse of juries in questions of the most momentous concern," and the complete destruction of the rights and liberties of Englishmen in India.

During the late controversy on the Ilbert Bill, the Government of India boasted that none of the predicted evils had followed their abolition of the Grand Jury. The honour of that non-fulfilment, however, is not due to them, but to the integrity and impartiality of the High Court Judges, who have administered the new law. By Section 14 of Act X of 1875, the High Court Judge presiding at the Sessions has been entrusted with so much of the functions of a Grand Jury as authorises him to make an entry upon the charge of the nature of "Not a true Bill," or "Not found," if it appears to him to be clearly unsustainable. If, however, upon the prosecution, for an alleged political offence, of a person obnoxious to the Government, the presiding Judge at the Sessions should happen to be as complaisant to the Government as the Judge who went out of his way to write a Minute in support of the Ilbert Bill when he was on leave in England, and therefore temporarily *functus officio*, he might fail to make an entry upon the charge to the effect that it is unsustainable, though it be really so; and, if two-thirds of the petit or special jury, as the case may be, are equally complaisant to the Government, the accused would stand a very poor chance of aquittal. Such a state of affairs could not happen with 23 Grand Jurors, 12 of whom must find a true Bill before the accused can be put upon his trial, and with 12 petit jurymen, whose verdict must be the unanimous opinion of the whole number, standing between the accused and a vindictive and tyrannical Government. It may be said that I have stated an extreme case, but the new method of trial substituted for the time-honoured institution of trial by jury is worthless, unless it can stand the most crucial test that can be applied to it, and be proved by that test to be better than the method of trial for which it is substituted. I therefore recommend this question to the serious and careful consideration of the Council of the Defence Association, whom the British people in India have appointed custodians of their rights and liberties in the place and stead of the *ex-officio* custodians, who, with a few brilliant exceptions, such as His Honour the Lieutenant-Governor of Bengal, Lieutenant-General the Hon'ble T. F. Wilson, the Hon'ble Messrs. Evans, Miller, Thomas, and the new member, the

Hon'ble Mr. Gibbon, have vacated their offices in that respect by violating the trust reposed in them; and I hope that Council will, in accordance with Blackstone's advice, do all in their power to restore trial by jury to its ancient dignity, in matters in which it has been impaired, or otherwise diverted from its first institution.

In Presidency towns there was no valid reason for diminishing the number of jurors, of which juries, according to ancient law and usage, ought to consist. But in the Mufassal the case is different. The paucity of Englishmen qualified to serve as jurors in Mufassal stations rendered a reducaion of the number of jurors unavoidable, and the restricted power which Mufassal Courts have over the liberty of the subject, makes the reduction of the number of jurors less objectionable than it would otherwise be. For the reasons above given, however, juries for the trial of Englishmen in Mufassal Courts ought to consist wholly of Englishmen. The number of jurors upon such juries ought to approach as near to the constitutional number twelve as can, without serious inconvenience, be summoned to attend, but the number should never be less than five, and if a district before whose court an Englishman is arraigned cannot furnish at least five unchallangeable English jurors, the case ought to be transferred to a Court whose district can supply that number, the verdict ought to be the unanimous opinion of the whole jury, and not simply of any majority thereof, however large, for since an Englishman ought not, according to ancient law and usage, to be convicted except upon the unanimous verdict of twelve of his equals and neighbours, it is unconstitutional, especially when the number of jurors is reduced, to convict him upon a majority only of the jury, however great that majority may be. The verdict of the jury ought to be final in case of acquittal in conformity with the legal maxim, "*Nemo debet bis vexari pro una et eadem causâ.*" "No one ought to be twice vexed for one and the same cause," and the power given to the Mufassal court virtually to appeal to the High Court against the verdict of the jury ought to be restricted to cases in which the jury finds the accused guilty and the Judge or Magistrate differs from their verdict. The trial by jury under Act III of 1884 ought to be made obligatory, and not left to the option of the accused, because the demand by him of a jury places him in an invidious position towards the Court, and since no man is perfect the demand is apt to prejudice the Judge or Magistrate against him before the trial begins, and last, though by no means least, Englishwomen ought to be exempted from being arraigned in a court presided over by a native Judge or Magistrate, for the cogent and abundant reasons to be found in the official opinions upon the Ilbert Bill. I recommend all these

important matters to the serious and earnest attention on the Council of the Defence Association.

I still adhere to the opinion expressed by me during the controversy that we ought, if possible, to have persisted to the end in insisting upon the entire withdrawal of the Ilbert Bill. But after Mr. Reynolds had, in a letter to you, virtually declared his intention to support the Government in that which he truly described in the Legislative Council on the 9th March 1883, to be the "serious responsibility" of passing the Ilbert Bill in opposition to the almost unanimous protest of the official and non-official community in India, and after Dr. Hunter had, in a letter to the *Times*, virtually announced his intention to break the pledge given by him in the same Council on the same date, and had, in the same letter, uttered the shameful threat that the Government was prepared to pass a measure subversive of our liberties with the aid of native votes, which they were unable, in 1872, to pass with the aid of English votes, the Council of the Defence Association exercised a very wise discretion in accepting the Concordat offered to them by the Government, especially as they did so under the distinct understanding, clearly stated, and ably insisted upon, in the Legislative Council by the Hon'ble Mr. Evans (to whom our warmest thanks are due for his able advocacy of our cause) to the effect that, should any attempt hereafter be made to alter the law in the direction indicated by the Ilbert Bill, we should be entitled to revert to the *status quo ante*, in which case the battle would be renewed and continued from the point at which it was broken off at the time when the Government sent a flag of truce with the Concordat to the Council of the Defence Association.

That the *Times* and all other well-conducted English papers are right in saying that the wisest and most dignified course for Lord Ripon to have pursued would have been to withdraw the Bill in a gracious manner, no man of sense can possibly doubt. By so acting, indeed, Lord Ripon would have greatly weakened the force of the charge of weak-mindedness made against him by the *Times*; but by acting as he has done, I am sorry to be compelled to say, he has proved it to be true.

Any one who compares the Ilbert Bill with Act III of 1884, must be struck with surprise at the immense difference between the ostentatious programme so grandiloquently advertised in the Objects and Reasons in the beginning of 1883, and the miserable abortion which the Government of India succeeded in hatching in the beginning of 1884, after a twelve months' incubation. If the Government had abandoned the Ilbert Bill altogether, their failure would not have been placed upon record, and, if they had abandoned it

graciously, the British people in India are too generous-hearted to have twitted them with their failure. As it is, however, every one must be struck with the astounding folly of the Government in passing Act III of 1884, and thereby placing in the Book of Acts, which in England would be called the Statute Book, an indelible record of the miserable failure of their attack upon the liberties of the British people in India. That record ought to act as a warning to every other ambitious young man, desirous of making a name for himself at the expense of his countrymen, whom a Caucus-Radical Government may inflict upon India. If Mr. Ilbert had been wise he would have studied the file of the *Englishman* for 1849 before he made up his mind to advocate the passing of his Bill.

It is a pity the Government of India did not follow the advice given it by me in my letter of the 22nd March 1883. If it had taken that advice to heart it would have abandoned the Ilbert Bill altogether rather than have made itself the laughing stock of the world by bringing forth so ridiculous a mouse as Act III of 1884, after publishing so grandiloquent an announcement of its intended accouchment as is contained in the Ilbert Bill and its Objects and Reasons. As a warning to all future Governments of India I re-quote the lines of Horace, quoted in my letter above referred to, in which I hope I may be pardoned for the liberty I have taken in substituting an hexameter of my own, epitomising the principle of the Ilbert Bill, in lieu of the second line of the original :—

"Nec sic incipies ut scriptor cyclicus olim :—
'Anglorum penitus fas est evertere jura'
Quid dignum tanto feret hic promissor hiatu ?
Parturiunt montes ; nascetur ridiculus mus."

That Act III of 1884 is not capable of being easily worked is abundantly clear ; but that English jurors will, as Mr. Ilbert insinuated in his speech in Council on the 4th January last, violate their oaths by "converting the Act into a source of impunity to evil-doers" is a proposition of so shameful a nature, and so utterly opposed to all experience of the conduct of English jurors, that though it, on that account, failed to hurt those whom it was intended to wound, it flew back like a boomerang thrown by an unskilful hand, and inflicted indelible disgrace upon him who launched it at his countrymen.

BRITANNICUS.

March 4. 1884

EUROPEAN BRITISH SUBJECTS.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—The first Act of the Government of India in which the term "European British subject" is used is Act XXXII of 1845. Previous to that Act the term "British-born subject" is used, as in Act XXIV of 1836, or "usually designated a British subject," as in Act XX of 1841. After 1845, however, the term "European British subject" is generally, though not invariably, used in the Acts, for in Act VII of 1853 the term "British subject" is used, and in Act XXII of 1854, though the term "European British subject" is used in the preamble, the term "British subject" is used as synonymous with it in the first and only section. Again, although there are two Acts, namely, Acts XXII and XXVIII of 1870 specially devoted to "European British subjects," and although the Acts abound with definitions of other terms, no definition is given of the term "European British subject," before 1872. From this we may fairly conclude that the term was so well understood that it needed no definition. When, however, Act X of 1872 was passing through Committee, some one appears to have thought it necessary to define the expression. It was, therefore, defined in Section 71 of that Act by attaching a meaning to it which no one had ever before dreamt of its bearing. That definition was re-enected, with a slight verbal alteration, in clause (*u*), Section 4 of Act X of 1882, which runs thus:—

"European British subjects," means (1) any subject of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, or Australian colonies or possessions of Her Majesty, or in the colony of New Zealand, or in the colony of the Cape of Good Hope or Natal; (2) and child or grand-child of any such person by legitimate descent."

Mr. Ilbert, in his speech in the Legislative Council, on the 9th March 1883, said:—"It will be seen that the definition is somewhat arbitrary and artificial." Arbitrary it certainly is, but artificial in the sense of "made by art," it decidedly is not. On the contrary, it is so extremely inartificial and inartistic that it could not have been drafted by Sir J. F. Stephen, but must have been foisted into Act X of 1872 by some unskilful draftsman in Committee.

The following cases will illustrate the absurdity of the definition, and the injustice it is capable of inflicting. If four English married couples, whom we will call A B, C D, E F, and G H, who have all been born in England of English parents, come and settle in India, and A B have a son J, and C D have a daughter K, and E F have a son

L, and G H have a daughter M, and J, K, L, and M are all born in India, and J and K marry and have a son N, born in India, and L and M also marry and have a daughter O likewise born in India, N and O will under the Act be "European British subjects." But if N and O marry and have two sons, the elder, P, born in India, and the younger, Q, born in England, P will not be a "European British subject," under the Act, but when Q arrives in India he will be a "European British subject" under the Act, because he is a "subject of Her Majesty born in the United Kingdom of Great British and Ireland." We shall thus have the absurdity of two legitimate sons of the same parents, the younger of whom is a "European British subject," whilst the elder is not. Nay more, the Act will unconstitutionally deprive P of the rights and liberties in consideration for the guaranteeing whereof, as his undoubted birth-right, his ancestors consented to settle the Crown of England upon the illustrious House of our present reigning Sovereign.

If, however, any one of the six persons J, K, L, M, N, and O, happen to be born in England, both P and Q will be "European British subjects" under the Act, even though they are both born in India. In this way, so far from "the representative of the fourth generation ceasing," as Mr. James Gibbs erroneously said "to be a European British subject," the title to that position can by marriages at proper intervals with persons born in England be indefinitely kept up.

Again, whilst, in the first case, the Act declares that P, the legitimate descendant of English men and women, and therefore, undoubtedly an Englishman, is not a "European British subject," it makes Her Majesty's Maori subjects born in New Zealand, Her Majesty's Hottentot and Negro subjects born in the colony of the Cape of Good Hope, and Her Majesty's Zulu subjects born in Natal, "European British subjects" on their arrival in India, though none of them may have been born in wedlock, or may have ever seen Europe.

But this is not all, for, whilst the illegitimate Maoris, Hottentots, Negroes, and Zulus above referred to become "European British subjects" under the Act on their arrival in India, the legitimate children born of English parents in foreign countries and in any of Her Majesty's colonies and possessions, not named in the clause above quoted, are debarred by the Act from becoming "European British subjects" on their arrival in India. The Act, therefore, unconstitutionally deprives a large body of Englishmen of the liberties which are their birth-right. The following are the names of some of the colonies and possessions of Her Majesty omitted to be named in the clause above quoted—Ceylon, Mauritius, Tasmania, Polynesia, St. Helena, Gambia, Sierra Leone, the West Indies, the Gold Coast, &c.

Then, again, why is legitimacy made one of the necessary qualifications for the rights of a "European British subject" in English children born in India, whilst it is utterly disregarded as a qualification in Maoris, Hottentots, Negroes, and Zulus who come to India? This is very inconsistent on the part of the Government. It is also very unjust to deprive of their rights those who, from no fault of their own, are born out of wedlock, one of those rights being the right to be tried by a jury of their equals and neighbours, which they would not forfeit in England by reason of their illegitimacy.

But the suicidal policy of the Government of India teems with inconsistencies. It is also redolent of injustice to Englishmen. Thus, by means of the definition above quoted, it deprives the Englishman or Western Aryan of the fourth generation in India of his rights, whilst it leaves the Eastern Aryan of the four hundredth generation in full possession of his. By unjust rules it also deprives the Western Aryan of the right to official employment in India acquired by means of his moral and physical superiority, and confers it upon the Eastern Aryan, whose only claim to it, if claim it can be rightly called, consists in having increased in wealth by means of the peaceful enjoyment of his property, which the moral and physical superiority of Englishmen has procured for him, and in having increased in knowledge by means of the gratuitous, or almost gratuitous, education which the generosity of Englishmen has conferred upon him. In order that I may not be misunderstood or misrepresented, I repeat that I am not arguing against the employment of natives, but against their employment to the exclusion of the English colonists of India.

Perhaps, however, that member of the Government, who thought it not derogatory to the dignity of his high office to write an autograph letter of thanks to a meeting of Caucus-Radicals for passing a resolution in favour of the happily defunct Ilbert Bill without understanding what they were [illegible] is more far-seeing than we give him credit for being, and the reason why the term "European British subject" is limited in the definition to the grandchildren of Englishmen of the present day, so far as it is so limited, is that he knows, or believes, that their great-grandchildren in India will not be European British subjects, because Caucus-Radical policy is so timid and suicidal that Mr Bright's disloyal wish of "Perish India" will be fulfilled, as far as England is concerned, by India becoming a Russian province by means of that peculiar kind of plébiscite which annexed Merv to the Russian Empire.

We have heard a great deal about the sanctity of pledges from one who wilfully made default in the redemption of a pledge given by himself. Allow me, then, to remind Lord Ripon of the pledge given by William III, a predecessor of our Sovereign, whose Viceroy he is, in consideration whereof our ancestors settled the Crown of England upon Her Majesty's illustrious House. That pledge was renewed by Her Majesty on her accession to the throne. It is, therefore, binding upon Her Majesty's Viceroy, and overrides all pledges (if any) given by Her Majesty's Ministers inconsistent with it. The pledge to which I allude is that contained in the Act of Settlement. By it Her Majesty is bound to maintain the religion, laws, and liberties of Englishmen, which that Statute declares to be "the birth-right of the people of England," and not of the people in England only, as the Government of India by its acts seems to imagine. If, therefore, Lord Ripon is as careful of his Sovereign's honour as he is bound in his capacity of Her Majesty's Viceroy to be, he will emancipate himself from his evil counsellors, cease to interfere with the religion, laws, and liberties of Englishmen, and hasten to repair any injury which has been done to them by his own, or any preceding Government of India.

There is a section of another Act which ought also to be repealed, because it is an unconstitutional enactment. I allude to Section 30 of Act IX of 1874, which unconstitutionally deprives an Englishman of his rights as a "European British subject," if he happens through misfortune to be left without means of subsistence. This treatment of unfortunate men is carrying out the costermonger's principle of "Hit him hard, Bill, he ain't got no friends" with a vengeance. Surely the poor man is sufficiently punished for being unfortunate by being sent to the work-house, without being also deprived of his rights as an Englishman so long as he remains in India. If the Government of India were as great a Government as it ought to be, it would be too magnanimous to persecute poor unfortunate Englishmen, whom hard fate has stranded upon the shore of this, to them, inhospitable land, [illegible] despotically and unconstitutionally despoiling them of all they have left on earth, rights and liberties as Englishmen.

In conclusion, allow me to recommend all these matters to the serious and earnest attention of Mr. Keswick and his colleagues, the members of the Council of the Defence Association.

BRITANNICUS.

March 15, 1884.